

2023 MAY 12 PM 4:09

CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TAVARES, FLORIDA

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

APRIL G. STOFFEL,

Petitioner,

vs.

CASE NO: 2008-DR-101292

DARRELL J. CROSS,

Respondent.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE came before the Court upon the Petition for Writ of Habeas Corpus filed in the above-styled action on May 9, 2023 (“Petition”). The Court, having reviewed the Respondent’s Petition and other pertinent documents in the Court file, reviewed the relevant legal authorities, and being otherwise fully advised in the premises, finds and concludes as follows:

PROCEDURAL HISTORY

1. On July 16, 2022, a *Petition for Order of Contempt* was mailed to the verified address of Respondent for failure to pay child support and/or insurance as previously ordered by the Court.

2. On August 8, 2022, a *Contempt Notice of Hearing Using Zoom Conferencing* was sent to the Respondent, with the hearing scheduled for August 25, 2022.

3. The Respondent failed to appear for the contempt hearing scheduled for August 25, 2022.

4. On September 7, 2022, an *Order on Motion for Contempt and Attachment and Order Directing Writ of Attachment to Issue Report of the Child Support Hearing Officer* was entered, issuing a writ of bodily attachment, as well as designating a cash purge amount of \$928.00.

5. On March 28, 2023, the Respondent was transported from Marion County, where he had previously been held on charges, to Lake County, where he was subsequently arrested under the aforesaid writ of bodily attachment for nonpayment of child support.

6. On March 28, 2023, an *Order on Review After Incarceration on Writ of Attachment for Non-payment of Child Support* was filed, finding that the Respondent has the present ability to pay the purge but not in the amount previously ordered. It was ordered that the Respondent shall be incarcerated in the Lake County Jail for a period of one hundred seventy-nine (179) days, with

credit for any time served, or until he has paid the lesser cash purge amount of \$150.00.

ANALYSIS

7. "It is well settled that an order of civil contempt for failure to pay child support requires findings of willful failure to pay ordered amounts. If incarceration is ordered as a result of the contempt, the court must make the affirmative finding that the contemnor possesses the present ability to comply with the purge. *Grant v. Kopp*, 27 So.3d 190 (Fla. 5th DCA 2010). Here, Judge Emily Currington made a finding on March 28, 2023, that the Respondent had the present ability to pay the lesser purge amount of \$150.00.

8. Respondent's filings seek leniency without addressing his present ability or inability to meet the much lower cash purge amount of \$150.00. Given the substantial reduction in the cash purge amount from the original amount of \$928.00 to the current amount of \$150.00, and further noting the absence of any information about the Respondent's present ability to comply with the current cash purge amount of \$150.00, the Petition is legally insufficient.

RULING

In view of the foregoing findings, the pertinent portions of the record, and applicable law, it is **ORDERED** and **ADJUDGED** that the Petition for Writ of Habeas Corpus filed on May 9, 2023, is **DENIED WITHOUT PREJUDICE**. Respondent may supplement the Petition with his ability or inability to meet the current cash purge amount of \$150.00 within ten (10) days from the date of rendition of this order.

NOTICE

DEFENDANT HAS THIRTY (30) DAYS FROM THE DATE OF RENDITION OF THIS ORDER TO FILE A NOTICE OF APPEAL. FAILURE TO TIMELY FILE A NOTICE OF APPEAL MAY RESULT IN THE FORFEITURE OF THAT RIGHT.

DONE and **ORDERED** in Chambers at Tavares, Lake County, Florida this 12TH day of May 2023.



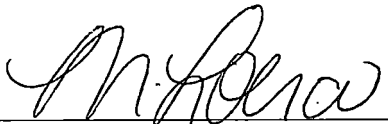
LARRY METZ, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been served by U.S. Mail/Inter-Office, Mail/Fax this 15 day of May 2023 to the following:

Jodi A. Zakaria, Counsel for DOR, 309 N. Apopka Avenue, Inverness, FL 34450
DOR/CSE, 1904 Thomas Ave., Ste 101, Leesburg, Fl 34748

Darrell J. Cross
Inmate #: 130974
Lake County Jail
551 W. Main Street
Tavares, Fl 32778

By: 
Deputy Clerk